

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BEAR RIVER BAND OF
ROHNERVILLE RANCHERIA,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

No. 1:20-cv-01539-AWI-SKO

ORDER re SETTLEMENT CONFERENCE

A Settlement Conference in this case is hereby SET for October 14, 2021, before Magistrate Judge Sheila K. Oberto at the U.S. District Court, 2500 Tulare Street, Fresno, California, 93721.¹

Consideration of settlement is a serious matter that requires thorough preparation prior to the settlement conference. Accordingly, IT IS HEREBY ORDERED that:

1. Pre-settlement Conference Exchange of Demand and Offer

A settlement conference is more likely to be productive if, before the conference, the parties exchange written settlement proposals. Accordingly, **by no later than September 3, 2021**, counsel for each plaintiff shall submit an updated written itemization of damages and settlement demand to each defense counsel with a brief summary of the legal and factual basis supporting the demand. **By no later than September 10, 2021**, each defense counsel shall submit a written offer to counsel for each plaintiff with a brief summary of the legal and factual basis supporting the offer.

¹ The time of the Settlement Conference will be set at the Pre-Settlement Conference on September 29, 2021 (*see* paragraph 6 below).

1 **2. Submission and Content of Confidential Settlement Conference Statements**

2 The parties are to send Confidential Settlement Conference Statements (Settlement
3 Statement) to the following email address: SKOorders@caed.uscourts.gov, to arrive no later than
4 **September 15, 2021**. Each statement shall be clearly marked "CONFIDENTIAL" with the date
5 and time of the mandatory settlement conference indicated prominently. Each party shall also file
6 a Notice of Submission of Confidential Settlement Conference Statement (*See* L.R. 270 (d)).

7 If the Settlement Conference is continued for any reason, each party must submit a new
8 Settlement Statement that is complete in itself, without reference to any prior Settlement
9 Statements.

10 Each Settlement Statement *shall include the following*:

- 11 a. A brief summary of the core facts, allegations, and defenses, a forthright
12 evaluation of the parties' likelihood of prevailing on the claims and
13 defenses, and a description of the major issues in dispute.
- 14 b. A summary of the proceedings to date.
- 15 c. An estimate of the cost and time to be expended for further discovery,
16 pretrial, and trial.
- 17 d. The nature of the relief sought.
- 18 e. An outline of past settlement efforts including information regarding the
19 "Pre-settlement Conference Exchange of Demand and Offer" required
20 above—including the itemization of damages—and a history of past
21 settlement discussions, offers, and demands.
- 22 f. A statement of each party's expectations and goals for the Settlement
23 Conference.

24 **3. Attendance of Trial Counsel and Parties Required**

25 *The attorneys who will try the case and parties with full and complete settlement authority*
26 *are required to personally attend the conference.*² An insured party shall appear by a

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28 ² Insurance carriers, business organizations, and governmental bodies or agencies whose settlement
 agreements are subject to approval by legislative bodies, executive committees, boards of directors

1 representative of the insurer who is authorized to negotiate, and who has *full authority to*
 2 *negotiate and settle the case*. An uninsured corporate party shall appear by a representative
 3 authorized to negotiate, and who has *full authority to negotiate and settle the case*. It is difficult
 4 for a party who is not present to appreciate the process and the reasons that may justify a change
 5 in one's perspective toward settlement. Accordingly, having a client with authority available by
 6 telephone is *not* an acceptable alternative, except under the most extenuating circumstances.³

7 In light of the coronavirus (COVID-19) outbreak and the resulting courthouse restrictions,
 8 *see* General Orders Nos. 612–618, the Court will revisit the in-person requirement closer to the
 9 date of the settlement conference and reserves the right to modify the requirement depending
 10 upon the courthouse restrictions, if any, in place as of October 14, 2021. The parties are advised
 11 that while the courthouse restrictions pursuant to General Order No. 618 are in place, Zoom
 12 videoconference settlement conferences are available. At the September 29, 2021 Pre-Settlement
 13 Conference, (*see* paragraph 6 below), the parties should be prepared to discuss the method of
 14 conducting the settlement conference and whether the settlement conference should proceed on
 15 October 14, 2021. If the parties opt to conduct the settlement conference by Zoom
 16 videoconference, the Court will provide the call-in information closer to the time of the settlement
 17 conference.

18 The Court expects both the lawyers and the party representatives to be fully prepared to
 19 participate. The Court encourages all parties to keep an open mind in order to reassess their
 20 previous positions and to discover creative means for resolving the dispute.

21 **4. Issues to Be Discussed**

22 The parties *shall* be prepared to discuss the following at the settlement conference:

- 23 a. Goals in the litigation and problems they would like to address in the
 24 settlement conference and understanding of the opposing side's goals.

25 _____
 26 or the like shall be represented by a person or persons who occupy high executive positions in the
 27 party organization and who will be directly involved in the process of approval of any settlement
 28 offers or agreements.

³ Out of town or out of state travel and the purchase of an airplane ticket are not extenuating circumstances.

- b. The issues (in and outside the lawsuit) that need to be resolved.
- c. The strengths and weaknesses of their case.
- d. Their understanding of the opposing side's view of the case.
- e. Their points of agreement and disagreement (factual and legal).
- f. Any financial, emotional, and/or legal impediments to settlement.
- g. Whether settlement or further litigation better enables the accomplishment of their respective goals.
- h. Any possibilities for a creative resolution of the dispute.

5. Statements Inadmissible

The parties are expected to address each other with courtesy and respect, and are encouraged to be frank and open in their discussions. Statements made by any party during the settlement conference are not to be used in discovery and will not be admissible at trial.

6. Pre-Settlement Telephonic Conference

Prior to the Settlement Conference, Magistrate Judge Oberto will hold a brief, telephonic discussion on September 29, 2021, at 4:00 PM (dial-in number: 1-888-557-8511; passcode: 6208204#). Only attorneys and unrepresented parties are required to participate in the conference.

IT IS SO ORDERED.

Dated: **September 1, 2021**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE